

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT REEVES,

Plaintiff,

Case No. 11-11830

Hon. Marianne O. Battani

v.

Magistrate Judge Laurie J. Michelson

K. SALISBURY, et al.,

Defendants.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Robert Reeves, filed suit alleging Defendants, employees of the Michigan Department of Corrections, violated his constitutional rights. The Court referred all pretrial matters to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B). Before the Court are Defendants' Objections to Magistrate Judge's Report and Recommendation (Doc. No. 49), which recommends that Plaintiff's Motion for Partial Summary Judgment be denied as moot and that Defendants' request for summary judgment in their favor be denied pursuant to the law of the case doctrine and under the federal and local procedural rules. The Court has reviewed the filings, including Defendants' objections, and for the reasons that follow, the Court **ADOPTS** the Report and Recommendation and **DENIES** Plaintiff's Motion for Partial Summary Judgment.

I. INTRODUCTION

While Defendants' summary judgment motion was pending, but after the Magistrate Judge had issued her Report and Recommendation relative to the merits of Defendants'

dispositive motion, Plaintiff filed a Motion for Partial Summary Judgment. After reviewing Reeves' motion and brief in support, the Magistrate Judge determined that the motion was better characterized as a supplemental response to Defendants' dispositive motion. In reaching her conclusion, the Magistrate Judge notes,

Despite the title, Plaintiff is not seeking summary judgment in his favor; rather, he was seeking to defeat Defendants' Motion. His argument section states, Plaintiff has shown there is a genuine issue of material fact on Plaintiff's First Amendment and Fourteenth Amendment claims.

(Doc. No. 47 at 4).

In addition, to Plaintiff's motion, the Magistrate Judge addresses Defendants' response, which not only asks the Court to deny Plaintiff's motion, but also asks the Court to award summary judgment to Defendants. (Doc. No. 47 at 4). The Magistrate Judge viewed the response as an attempt by Defendants to relitigate their summary judgment motion in their response to Plaintiff's Motion for Partial Summary Judgment. She recommends that the Court reject their request.

II. STANDARD OF REVIEW

In cases where a magistrate judge has submitted a report and recommendation, and a party has properly filed objections to it, the district court must conduct a *de novo* review of those parts of the report and recommendation to which the party objects. 28 U.S.C. § 636(b)(1)(C). The district "court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.*

III. ANALYSIS

Defendants object to the Report and Recommendation on several grounds. First they contest the Magistrate Judge's reading of Plaintiff's motion. The Court has reviewed

the motion, and agrees with the Magistrate Judge's characterization. Although there are inconsistencies within Plaintiff's brief, this Court concludes that the gist of Plaintiff's argument is that genuine factual disputes render summary judgment inappropriate. Therefore, the Court looks beyond the title of the filing, and rejects it as moot. Moreover, after the R&R was filed, Reeves filed his Opposition to Defendants' Response to Plaintiff's Motion for Partial Summary Judgment, in which he reiterates that Defendants are not entitled to summary judgment, and have not shown that there is "no genuine dispute as to any material fact." (Doc. No. 48 at ¶¶ 1, 3).

In addition, the Court concurs with the recommendation that Defendants' renewed request for summary judgment is not properly before the Court. Defendants timely filed their dispositive motion, which was granted in part and denied in part. They did not move for reconsideration, and the Court declines to consider their renewed request for summary judgment.

IV. CONCLUSION

Accordingly, the Court **ADOPTS** the Magistrate Judge's recommendation. For the reasons stated above, Plaintiff's motion is **DENIED** as moot and Defendants' request for summary judgment is **DENIED**.

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATE: September 12, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of this Order was served upon all parties of record via ordinary U.S. Mail and/or electronically.

s/Bernadette M. Thebolt
Case Manager

CERTIFICATE OF SERVICE

Copies of this Order were e-filed and/or mailed to Plaintiff and counsel of record on this date.

Case Manager